

Federal Communications Commission

WASHINGTON, D.C.

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Federal Communications Commission
Office of Secretary

In the Matter of

Amendment of Section 73.622(b)
Table of Allotments,
Digital Television Broadcast Stations
(Jackson, Mississippi)

)
)
)
) MM Docket No. 01-43
) RM-10041
)
)

To: Allocations Branch
Media Bureau

RESPONSE TO SECTION 1.65 SUPPLEMENTS

Gene A. Blailock ("Blailock"), licensee of WBMS-CA, Channel 10, Jackson, Mississippi, by counsel and pursuant to Section 1.45 of the Commission's Rules, hereby responds to the two Section 1.65 Supplements filed by CivCo, Inc. ("Civic") in the above-referenced matter on February 20, 2003 and April 10, 2003. For the reasons that follow, the Bureau should dismiss Civic's Supplements and its proposed amendment to the DTV Table of Allotments.¹

On July 14, 1999, Civic filed a DTV application for WLBT-TV to operate on Channel 51 (FCC File No. BPCDT-19990714LC), and filed a notice of intent to maximize on Channel 51 on December 21, 1999. However, instead of filing a "bona fide application for maximization by

¹ With respect to Civic's February 20, 2003 Supplement, it should be rejected outright by the Bureau as inconsistent with the Commission's procedural rules. Indeed, Civic itself admits (at 2) that it filed the Supplement despite the fact that "no substantial change of potentially decisional significance has occurred since the close of the pleading cycle." Section 1.65 only contemplates furnishing information in the event of a "substantial change," which did not occur here. See 47 C.F.R. § 1.65. Accordingly, Civic's attempt to use Section 1.65 as a loophole to make untimely filings extending the pleading cycle should be rejected by the Bureau.

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May 1, 2000” within the meaning of Section 336 of the Community Broadcasters Protection Act (“CBPA”),² Civic filed a last minute application on May 1, 2000 to operate on Channel 9 instead of its allotted Channel 51. Civic simultaneously sought a series of significant waivers to avoid compliance with the Commission’s normal processing and technical rules. Civic then attached the May 1, 2000 application and waiver requests to its Petition for Rulemaking to change the DTV Table of Allotments. Subsequently, on August 16, 2000 the Commission rejected Civic’s application proposing operations for WLBT-DT on Channel 9 instead of its allotted Channel 51. Despite the fact that Civic’s application to operate on Channel 9 (rather than Channel 51) was denied more than 2 ½ years ago, to the best of Blailock’s knowledge, Civic has not made *any* progress towards DTV operations on its allotted channel.

Civic disingenuously claims that the Bureau should grant its reallocation proposal as there are “no material issues in dispute” in this proceeding. *See* February 20, 2003 Supplement at 4; April 10, 2003 Supplement at 2. To the contrary, as Blailock has demonstrated previously, the Commission should reject the substitution of Channel 9 because the proposed DTV allotment will result in prohibited contour overlap with the existing service provided by WBMS-CA on Channel 10.³ Civic is undoubtedly aware that the CBPA and the Rules adopted thereunder by the Commission preserve the service areas of Class A stations. Specifically, Section 336(a)(1)(A)(ii) of the CBPA accords primary status to WBMS-CA and Section 73.623 of the Commission’s Rules specifies the parameters of the protection afforded to WBMS-CA.⁴ Therefore, any proposed operation of WLBT-DT on Channel 9 may not cause interference to WBMS-CA’s existing Class A operations on Channel 10. The Engineering Statement of B.W.

² *See* 47 U.S.C. § 336(f)(1)(D)(ii).

³ *See* Blailock Comments at 2-3 and Engineering Exhibit; Blailock Reply Comments at 2-3.

⁴ *See* 47 U.S.C. § 336(f)(1)(A)(ii); 47 C.F.R. § 73.623.

St. Clair attached hereto as Exhibit A establishes that the facilities proposed by Civic would cause impermissible levels of interference to WBMS-CA's operations. Because this interference is contrary to both the letter and the spirit of the CBPA and the Commission's Rules, it cannot be permitted to occur.

There are two circumstances under the CBPA where the proposed DTV allotment of WLBT-DT could be given priority over WBMS-CA, but neither exception is applicable here. The first is if the Channel 9 DTV allotment had been established prior to January 28, 2000, the date on which WBMS-CA filed its Certification of Class A Eligibility. As noted above, Civic did not file its request for Channel 9 until May 1, 2000, the day its maximization application was due for Channel 51. As a result, Civic cannot take advantage of the first exception. Second, Civic could arguably change its allotted DTV channel in this case if WLBT-DT faced significant "technical problems" operating DTV facilities on Channel 51 that required an "engineering solution."⁵ Yet, as Blailock has repeatedly demonstrated in this proceeding, Civic has failed to provide any reason -- technical or otherwise -- necessitating a move by WLBT-DT from Channel 51 to Channel 9.⁶ Indeed, Civic's proposal would create, rather than solve, technical problems. As neither of the CBPA's exceptions apply, Civic's proposal must be rejected.

A final element raised by Civic involves its entering into a "DTV Interference Agreement" with WTVA, Inc. and LibCo., Inc. *See* April 10, 2003 Supplement at 2. The Agreement filed with the Bureau is irrelevant for a number of reasons. As an initial matter, the Agreement does nothing to elevate the priority of Civic's proposal with respect to the protection of Class A stations and does not in any way justify the adverse impact the proposed channel substitution will have on WBMS-CA. In addition, the very foundation of the Agreement is

⁵ *See* 47 U.S.C. § 336(f)(1)(D).


⁶ *See* Blailock Comments at 2-3.

based on assumptions that are not likely to occur. Specifically, the parties have agreed that WTVA-DT on Channel 8 will accept interference that will result from Civic's proposed operation of WLBT-DT on Channel 9, and have also agreed that Civic will accept interference to WLBT-DT's proposed operations on Channel 9 from WTVA-DT's proposed operations on Channel 8. Yet, the Commission has already dismissed as defective WTVA's proposal to move WTVA-DT from Channel 57 to Channel 8.⁷ Similarly, the Commission has dismissed Civic's application to substitute Channel 9 for Channel 51 and is unlikely to permit any such operations in the future given the interference that will be caused within the WBMS-CA service area. In short, the Agreement is irrelevant as it is based upon proposals already rejected by the Commission and does not support WLBT-DT's belated desire to operate on Channel 9.

Conclusion

In light of the foregoing, Blailock submits that the proposal in this proceeding must be rejected. It will cause interference to the protected Class A facilities of WBMS-CA, and Civic has not provided any valid justification for changing its longstanding allotment. Thus, the proposal cannot be adopted.

Respectfully submitted,

By: 
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Dated: May 23, 2003

⁷ See FCC Form 337 filed by WTVA, Inc. on March 19, 2003 (FCC File No. BEPCDT-20030319ACU) at Exhibit 1.

EXHIBIT A

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◆
B. W. St. Clair

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ENGINEERING STATEMENT

This Engineering Statement is in support of the opposition of Gene A. Blailock, licensee of WBMS-CA, to the use of channel 10 by CivCo, Inc. for the companion digital station to WLBT-TV.

BACKGROUND

A document filed by Dow, Lohnes & Albertson on behalf of CivCo, Inc.¹ contains the statement:

“....In an engineering analysis attached thereto, Byron St. Clair claimed that channel change would cause new interference of about one per cent. This analysis, however, is mixed apples and oranges. Specifically, it used OET-69 methods to analyze the coverage and interference areas determined by the FCC’s curves rather than the areas determined by the Longley-Rice point-to-point propagation method. Under OET Bulletin 69, “Longley-Rice Methodology for Evaluating TV Coverage and Interference,” coverage and interference are calculated using Longley-Rice, not the FCC’s curves.

REPLY

Actually the “Engineering Statement in question first points out that the proposed operation of WLBT-DT on channel 09 would cause contour overlap interference to WBMS-LP (now WBMS-CA) as licensed.²

It then goes on, contrary to the statement above about mixed oranges and apples, to provide a “Longley-Rice Population Loss Analysis” in accordance with OET Bulletin 69. As suggested in the last sentence (Under OET Bulletin . . . etc) *the coverage and the interference were both calculated using Longley-Rice terrain dependent calculations in accordance with OET Bulletin 69.*

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There are four permutations which were considered in my previous “Engineering Statement” based on:

¹Document entitled “Section 1.35 Supplement” , dated February 20, 2003 and signed by John S. Logan, attorney for CivCo, Inc.,Footnote page 3.

²Gene a. Blailock holds a construction permit, BPTVL-20010116AFC to increase the maximum ERP of WBMS-CA to 3.0 kW. The protected area associated with this construction permit is larger and there is more contour overlap.

WBMS-CA at 0.1 kW ERP as licensed
WBMS-CA at 3.0 kW, then an application, now a construction permit
WLBT-DT at 3.2 kW
WLBT-DT at 20 kW

Table I from my Engineering Statement of April 13 is reproduced here for convenience.

Table I Population Lost by WBMS-CA

	WLBT-DT Ch 10 3.2 kW & Directional Ant.	WLBT-DT Ch 10 20 kW & Non-dir Antenna
WBMS-CA 0.1 kW as licensed	population loss 2378 1.04%	population loss 57248 25.1%
WBMS-CA 3.0 kW (now) construction permit	population loss 4770 1.40%	population loss 42797 12.5%

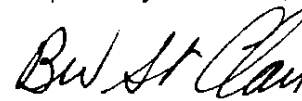
CivCo, Inc. in a filing titled "Second Section 1.65 Supplement"³ indicates an interest in, if not an outright intention to, use 20 kW ERP and a non-directional antenna at the same height and coordinates as used in the previous channel 09 filing. Whether the power is 32. KW as originally requested or 20 kW the loss exceeds the 0.5% accepted by the FCC as de minimus.

CONCLUSION

The conclusion remains unchanged from the Engineering Statement of April 13, 2001, which stated:

Even with the limited 3.2 kW ERP and a directional antenna with the reduced radiation towards WBMS-LP service area, the operation of WLBT-DT on channel 09 will adversely impact WBMS-LP. If WLBT-DT is not only allowed to use channel 09 but also to increase its ERP towards the community of Jackson the impact on WBMS-LP will become severe. The impact would arise, not from necessity, but only from satisfying a preference of Civic

Respectfully submitted,



B. W. St. Clair
Engineering Consultant

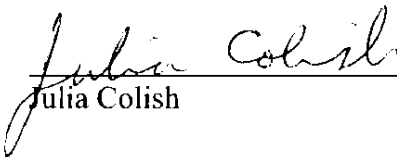
May 12, 2003

³Section 1.65 Supplement, MM Docket 01-43, RM 10041, Exhibit A, §A.1(b), Interference Agreement submitted by three parties including CivCo, Inc.

CERTIFICATE OF SERVICE

I, Julia Colish, a secretary with the law firm of Shaw Pittman LLP, hereby certify that copies of the foregoing "**RESPONSE TO SECTION 1.65 SUPPLEMENTS**" were served via U.S. mail on this 23rd day of May 2003 on the following:

<p>*Mr. Rick C. Chessen Associate Bureau Chief Digital Television Task Force Media Bureau Federal Communications Commission 445 Twelfth Street, SW Room 3-A726 Washington, DC 20554</p>	<p>*Ms. Pam Blumenthal Allocations Branch Policy Division Media Bureau Federal Communications Commission 445 Twelfth Street, SW Room 2-A860 Washington, DC 20554</p>
<p>*David D. Oxenford Lauren Lynch Flick Shaw Pittman LLP 2300 N Street, NW Washington, DC 20037 <i>Counsel for Vicksburg Channel 35 Associates, LLC</i></p>	<p>Stephen C. Simpson Law Office of Stephen C. Simpson 1090 Vermont Avenue, NW Suite 800 Washington, DC 20005 <i>Counsel for George S. Flinn, Jr.</i></p>
<p>Jeffrey L. Timmons Jeffrey L. Timmons, P.C. 3235 Satellite Boulevard Building 400, Suite 300 Atlanta, GA 30096-8688 <i>Counsel for KM Communications, Inc.</i></p>	<p>John S. Logan Kevin P. Latek Dow, Lohnes & Albertson, PLLC 1200 New Hampshire Avenue, N.W. Suite 800 Washington, DC 20036-6802</p>


Julia Colish

*Via Hand Delivery